

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

May 12, 2000

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TELECOMMUNICATIONS
DIVISION

In Re:

**Petition for Arbitration of ITC^DeltaCom
Communications, Inc. with BellSouth
Telecommunications, Inc. Pursuant to the
Telecommunications Act of 1996**

Docket No. 99-00430

**AMENDED FINAL BEST OFFERS
OF ITC^DELTACOM TELECOMMUNICATIONS, INC.**

INTRODUCTION

On April 4, 2000, the Tennessee Regulatory Authority ("TRA") directed ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") and BellSouth Telecommunications, Inc. ("BellSouth") to submit their Final Best Offers on Issues 4(a), 5, and 8(e). Pursuant to the TRA's ruling, ITC^DeltaCom filed its Final Best Offers on May 4, 2000, which contained proposed language as requested by the Commission. On May 5, 2000, BellSouth filed its Final Best Offers, but did not limit its filing to proposed language.

ITC^DeltaCom believes that it has complied with the TRA's ruling on April 4, 2000, and did not understand that ruling to allow further briefing of the issues already decided upon by the Authority. In light of BellSouth's approach and in an abundance of caution, however, ITC^DeltaCom hereby submits this pleading to provide its rationale in support of its Final Best Offers. Although this is an "amended" pleading, ITC^DeltaCom has not changed any

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of the language in its proposed provisions submitted on May 4, 2000. The language submitted on May 4, 2000 is restated below with regard to each issue for the convenience of the TRA.

DISCUSSION

A. Should BellSouth Provide Cageless Collocation to ITC^DeltaCom 30 Days After a Firm Order Is Placed? – Issue 4(a).

1. ITC^DeltaCom's proposed language

The standard interval for the provisioning of cageless collocation is 30 calendar days from the date of the firm order where there is conditioned space and where ITC^DeltaCom installs the bays/racks. Conditioned space is defined as space that does not require an upgrade for HVAC, power plant, or additional Battery Distribution Fuse Bay ("BDFD") installation. In no event, should the provisioning interval for cageless collocation exceed 60 business days from the date of the firm order.

In situations of space exhaust, adjacent collocation in lieu of cageless collocation shall be provided within thirty to sixty calendar days of a firm order.

2. ITC^DeltaCom's rationale

Thirty (30) calendar days is sufficient time to provision cageless collocation where:

(1) there is conditioned space; (2) ITC^DeltaCom installs the bays/racks; and (3) the conditioned space does not require an upgrade for HVAC, power or additional BDFB. Because ITC^DeltaCom contractors shall install the power, cabling, and cabling to MDF and to the BDFB, BellSouth should be able to consistently meet the thirty (30) calendar day interval in the circumstances described above.

As ordered by the TRA, the charges for cageless collocation shall be the same as virtual collocation charges.

B. Should the Parties Continue Operating Under Existing Local Interconnection Arrangements? – Issue 5.

Under Issue 5, the TRA identified nineteen (19) issues relating to interconnection for which the parties were directed to submit Final Best Offers. The Parties have since reached agreement on fifteen (15) of these issues. There are four remaining issues in dispute: (i) the definition of local traffic; (ii) the treatment of transit traffic; (iii) binding forecasts; and (iv) reciprocal compensation.¹

1. Definition of Local Traffic

(a) ITC^DeltaCom's proposed language

Local traffic (not including transit traffic) for these purposes shall include any telephone call that originates and terminates in the same LATA and is defined by the originating party's general subscriber services tariff and is billed by the originating company as a local call. Local traffic also includes any interLATA local traffic for which a local exemption has been granted by the appropriate regulatory authority. The Parties further agree that the exchange of traffic for Extended Area Service (EAS) shall be considered local traffic and compensation for such traffic shall be set at reciprocal compensation rates. EAS routes are defined in the Parties respective General Subscriber Services Tariffs.²

(b) ITC^DeltaCom's rationale

ITC^DeltaCom modified the language contained in its current interconnection agreement with BellSouth that was previously approved by the TRA to incorporate any

¹ Although reciprocal compensation is one of the nineteen issues identified in Exhibit B (Petition Issue 5), the TRA has addressed reciprocal compensation as part of Petition Issue 3. Therefore, ITC^DeltaCom is not submitting final best offer language for reciprocal compensation, but will do so at the request of the TRA.

² Attached hereto as Appendix 1 is the existing interconnection agreement language previously approved by the TRA.

interLATA local exemptions. For example, the Memphis, Tennessee to West Memphis, Arkansas rate centers is treated as a local call.

2. Transit Traffic Service

(a) ITC^DeltaCom's proposed language

The Parties agree that each shall provide Transit Service to the other on the terms and conditions set forth in this Section 10.

"Transit Service" means the delivery of certain traffic between either Party and a third party telecommunications provider (hereafter, "Third Party Carrier") by the Other Party over the local interconnection trunks. The following traffic types will be delivered: (i) Local Traffic (including EAS traffic), IntraLATA, and InterLATA Toll Traffic originated from the Other Party to such Third Party Carrier, and (ii) Local (including EAS traffic), IntraLATA and InterLATA Toll Traffic originated from such Third Party Carrier and terminated to the Other Party. If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) a CLEC other than ITC^DeltaCom; (2) an ILEC other than BellSouth; or (3) another telecommunications company such as a wireless telecommunications service provider, the party performing the intermediary function will bill either the state ordered rate or a \$0.0015 per minute charge. However, BellSouth agrees that ITC^DeltaCom may cross-connect directly to such third Parties at the point of interconnection ("POI"). In such event, tariffed cross-connection non-recurring charges will apply, and no transiting charge will apply.³

(b) ITC^DeltaCom's rationale

The language proposed by ITC^DeltaCom is identical to that contained in the existing interconnection agreement. Today BellSouth routes wireless traffic to ITC^DeltaCom for delivery. In addition, ITC^DeltaCom should not be required to have a contract with each and every ILEC and CLEC as BellSouth now proposes in Section 10.2.

³ Attached hereto as Appendix 1 is the existing interconnection agreement language previously approved by the TRA.

If the TRA were to adopt BellSouth's proposal, the current traffic routing procedures between the parties would have to be modified because ITC^DeltaCom would have to contract with numerous CLECs and ILECs. Originally, BellSouth agreed to permit transit traffic as set forth above. Thus, ITC^DeltaCom did not seek to enter into contractual arrangements with every ILEC and CLEC. BellSouth now seeks to change these local interconnection procedures with Section 10.2. ITC^DeltaCom opposes this proposed change by BellSouth because it would cause an immediate and significant increase in resources and money to: (1) establish these contracts; and (2) pay BellSouth additional charges for the transit traffic beyond those that ITC^DeltaCom pays today. The TRA should reject BellSouth's attempt to change the status quo.

3. Binding Forecasts

(a) ITC^DeltaCom's proposed language

In addition to the forecasting requirements in Section 4.7, each party may at its option submit a binding forecast. The party receiving the binding forecast must make available the required capacity in the time frame specified by the party submitting the binding forecast. A binding forecast assures that either parties' long-term requirements can be met with minimal impacts with respect to constraints for switch and transport services. Binding forecasts should be submitted per access tandem area and can specify end office or tandem requirements.

Bindings forecasts must be submitted at least 90 days in advance of the required due date and cannot extend a time period greater than 18 months or 6 quarters from the 90-day advanced notice. Binding forecast may be specified in a Monthly or Quarterly format. The carrier receiving the forecast must make the capacity available at the beginning of the time period specified, subject to the same intervals and provisioning processes as non-binding forecasts and trunk orders. A carrier may have more than one binding forecast for a given tandem area. In this case, the binding forecasts will have cumulative requirements, with the demands of the oldest forecast being met first before going, in secession, to the next oldest forecast.

The party receiving the binding forecast has 30 days to respond, in writing, if they are unable to fulfill the binding forecast and shall specify the time frame the requested capacity will become available. The party issuing the forecast has the option to modify the binding forecast to accommodate the constraints of the other party or withdraw the forecast at that time.

If the carrier submitting the binding forecast does not order or process orders for at least 75% of the capacity of the binding forecast in the time period specified in the forecast, penalties will be assessed at 50% of the first month's recurring and non-recurring rates in Attachment 11 for all capacity not ordered below the 75% capacity level.

If the carrier receiving the forecast does not have the necessary facilities available to meet the due dates specified in the normal ordering process, that carrier will make reasonable, best efforts to issue due dates as close to the specified due date as possible. Non-recurring and first month's recurring charges will be waived for orders in which the carrier can not meet the specified due date or is at least 10 days past the due date in turning over facilities to the other party. The carrier issuing the binding forecast, has the right to modify the quantities in the binding forecast when the carrier providing service can not meet at least 75% of the demand requirements for a given access tandem area.

(b) ITC^DeltaCom's rationale

ITC^DeltaCom submitted a final best offer for binding forecasts per its understanding of the TRA's directions from the April 4, 2000 Hearing. Subsequent to ITC^DeltaCom's filing of May 4, 2000 with the TRA, ITC^DeltaCom learned that BellSouth and ICG Telecom Group, Inc. ("ICG") have submitted binding forecast language to the Alabama Public Service Commission ("APSC"), which the APSC approved. Attached as Appendix 2 is the language approved by the APSC. ITC^DeltaCom is willing to accept this language.

ITC^DeltaCom points out that it repeatedly asked BellSouth negotiators via e-mail and via telephone, both before and after submitting final best offer language to the TRA, whether

BellSouth had developed language for binding forecasts. BellSouth has consistently refused to provide ITC^DeltaCom negotiators with *any* offer on binding forecasts. ITC^DeltaCom notes that the primary difference between BellSouth's proposal and the language adopted by the APSC is that BellSouth wants an 85% capacity utilization factor, which is extremely high when compared with the 60% capacity utilization factor approved by the APSC. The TRA should adopt the proposal agreed to by BellSouth with ICG in Alabama.

C. Should language covering tax liability be included in the interconnection agreement, and, if so, should that language simply state that each party is responsible for its own tax liability? –Issue 8(e).

ITC^DeltaCom proposed tax language in Exhibit A, General Terms and Conditions, page 11, Section 13.1, which is attached hereto as Appendix 3. BellSouth did not file or submit proposed tax language in the arbitration hearing. However, ITC^DeltaCom further offers the language below as a compromise based on BellSouth's template language.

1. ITC^DeltaCom's proposed language

Any federal, state, county, city or other jurisdictional excise, license, utility, telecommunications, sales use or other tax (excluding taxes levied on income) resulting from the performance of this Agreement shall be borne by the party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other party. Any taxes which one party is obligated to collect and remit on behalf of the other party shall be separately itemized on applicable billing documents between the parties. The party obligated to pay any such tax may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such party shall not permit any lien to exist on any asset of the other party by reason of the contest. The party obligated to collect and remit taxes shall cooperate in any such contest by the other party by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Notwithstanding the foregoing, either party may provide the other party with a tax exemption certificate, which

the other party shall honor. The tax exemption certificate shall state the jurisdiction, the type of tax and the account numbers to which the exemption shall apply and shall be signed by an officer or other authorized agent of the party submitting the certificate. In the event the exempt status for which the party is claiming exemption becomes void, such party shall notify the other party of the date of the rescission and the party will be billed and shall pay for the taxes, if any, that should have been billed during the void period.

2. ITC^DeltaCom's rationale

ITC^DeltaCom does have tax language in its interconnection agreements with GTE and Sprint. ITC^DeltaCom's proposed language is similar to that contained in those agreements. The existing interconnection agreement between ITC^DeltaCom and BellSouth on file with the TRA does not contain any tax language, and neither Party has filed any complaints or stated that it has had problems during the two-year agreement. ITC^DeltaCom's proposed language is clear, concise and sets forth the basic legal premise that both Parties will abide by all federal, state, and municipal laws. BellSouth's laborious attempt to identify and account for each and every potential tax consequence or scenario is cumbersome and wasteful. The TRA should adopt ITC^DeltaCom's proposal regarding tax liability language.

CONCLUSION

For the foregoing reasons, the TRA should adopt ITC^DeltaCom's Final Best Offers on Issues 4(a), 5, and 8(e) and order that ITC^DeltaCom's proposed language be incorporated into the interconnection agreement with BellSouth.

Respectfully submitted this 12th day of May, 2000.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of May, 2000, a true and correct copy of the foregoing was served by hand delivery, facsimile transmission, overnight delivery or U. S. Mail, first class postage prepaid, to the following:

Guy Hicks, Esq.

BellSouth Telecommunications, Inc.

333 Commerce Street, Suite 2101

Nashville, TN 37201-3300



H. LaDon Baltimore

APPENDIX 1

G. Cross-Connection to Other Collocators

Where one Party collocates in the wire center of the other Party, the Party operating the wire center shall allow the Party collocated at the wire center to directly interconnect to any other entity which maintains a collocation facility at that same wire center. The Party operating the wire center shall enable such interconnection by effecting a cross-connection between those collocation facilities, as jointly directed by the Party collocated at the wire center and the other collocated entity. For each such cross-connection, the Party operating the wire center shall charge one-half the otherwise applicable standard tariff or contract special access cross-connect rate to the collocated Party, and the identical rate to the other collocated entity. No other charges shall apply for such cross-connection.

VI. LOCAL TRAFFIC EXCHANGE

A. Exchange of Traffic

The Parties agree for the purpose of this Agreement only that local interconnection is defined as the delivery of local traffic to be terminated on each party's local network so that customers of either party have the ability to reach customers of the other party, without the use of any access code or delay in the processing of the call. Local traffic for these purposes shall include any telephone call that originates and terminates in the same LATA and is billed by the originating exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC, with which DeltaCom is not directly connected. The Parties further agree that the exchange of traffic on BellSouth's Extended Area Service (EAS) shall be considered local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

B. Compensation

With the exception of the local traffic specifically identified in subsection (C) hereafter, each party agrees to terminate local traffic originated and routed to it by the other party. The Parties agree that BellSouth will track the usage for both companies for the period of the Agreement. BellSouth will provide copies of such usage reports to DeltaCom on a monthly basis. For purposes of this Agreement, the Parties agree that there will be no cash compensation exchanged by the parties

3. The Parties agree to delete in its entirety Section VI(B) of the Interconnection Agreement and substitute the following Section VI(B):

With the exception of the local traffic specifically identified in subsection (C) hereafter, each party agrees to terminate local traffic originated and routed to it by the other party. Each Party will pay the other for terminating its local traffic on the other's network the local interconnection rate of \$.009 per minute of use in all states. Each Party will report to the other a Percent Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

4. The Parties agree to delete in its entirety Section VI(C) of the Interconnection Agreement and substitute the following Section VI(C):

If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) a CLEC other than DeltaCom; (2) an ILEC other than BellSouth; or (3) another telecommunications company such as a wireless telecommunications service provider, the party performing the intermediary function will bill a \$.0015 per minute charge. However, BellSouth agrees that DeltaCom may cross-connect directly to such third Parties at the POI. In such an event, tariffed cross-connection non recurring charges will apply, and no transiting charge will apply.

5. Except for Number Services Intercept Access Service provided by BellSouth in the state of Georgia, the Parties agree to amend Attachment C-11 of the Interconnection Agreement to delete the rate of \$0.30 per intercept query and replace said rate with a rate of \$0.25 per intercept query.

6. The Parties agree to amend the Interconnection Agreement to include Attachment 1 attached to this Amendment and incorporated herein by this reference.

7. Amendment 1 to the Interconnection Agreement relating to resale, executed on March 12, 1997, is deleted in its entirety and replaced with Attachment 2, attached hereto and incorporated herein by this reference.

8. The Parties agree that all of the other provisions of the Interconnection Agreement shall remain in full force and effect.

9. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the appropriate state public service commission or other regulatory body

APPENDIX 2

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APPENDIX "A"

**APSC APPROVED
LANGUAGE GOVERNING
BINDING FORECASTS**

- 3.6.5.1 In addition to, and not in lieu of, non-binding forecasts, ICG may provide to BellSouth a binding forecast of the trunks and switchports that BellSouth will need to interconnect with ICG in order to terminate traffic to ICG. ICG shall provide to BellSouth justification for the quantity of trunks contained within the binding forecast. The due date contained in the binding forecast shall be three months, unless otherwise agreed to, from the date the binding forecast is submitted to BellSouth.
- 3.6.5.2 BellSouth shall provide the total amount of requested trunks from either tandem or end offices depending on trunk and facilities availability.
- 3.6.5.3 A binding forecast shall not replace the ASR process of ordering trunks and BellSouth shall order the quantity of trunks from ICG set forth in the binding forecast. BellSouth shall request due dates on the trunk orders to coincide with the due dates specified in the binding forecast, and the Parties shall provision the ordered trunks by the due date.
- 3.6.5.4 To recover the cost associated with assuring that the quantity of trunk port terminations needed to meet the binding forecast are available on the agreed upon due date, ICG shall pay to BellSouth \$305.00 for the first DS1 trunk port and \$152.50 for each additional DS1 trunk port forecasted in a trunk group (i.e. between an A to Z location or BellSouth switch location to an ICG switch location).
- 3.6.5.5 If, within 180 days of installation of the trunks, 60 percent of the capacity of the trunks is not being utilized, ICG will pay BellSouth a percentage of the total monthly recurring trunk and facility charges from BellSouth's tariffs for the percentage of the trunks' capacity that is not being utilized.
- 3.6.5.6 If, within 180 days of installation of the trunks, the trunks are not being utilized to the capacity set forth above, the excess of the trunks may, after proper notice to ICG pursuant to the TSR process, be disconnected by BellSouth.
- 3.6.5.7 Utilization on BellSouth reciprocal interconnection trunk groups associated with a binding forecast shall be measured monthly and shall be measured at the time consistent busy hour. The charges as a result of underutilization as described above shall apply monthly.
- 3.6.5.8 Except in the instance of underutilization by ICG as described in section 3.6.5.5, neither Party shall charge the other for nonrecurring trunk and -recurring, if applicable, trunk charges associated with a binding forecast.
- 3.6.5.9 Any trunks installed, as a result of the binding forecast, must remain in service for a period of at least 180 days.

APPENDIX 3

11. Resolution of Disputes

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission or other appropriate forum for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement. The Party which does not prevail shall pay all reasonable costs of the arbitration or other formal complaint proceeding, including reasonable attorney's fees and other legal expenses of the prevailing Party.

12. Limitation of Use

The Parties agree that this Agreement shall not be offered by either Party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other Party in that jurisdiction or for any other purpose.

13. Taxes

- 13.1 Any Federal, state or local excise, license, sales, use or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other party. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The Party obligated to collect and remit taxes shall do so unless the other Party provides such Party with the required evidence of exemption. The Party obligated to pay any such taxes may contest the same and shall be entitled to the benefit of any refund or recovery. The Party obligated to collect and remit taxes shall cooperate fully in any such contest by the other Party by providing records, testimony, and such additional information or assistance as may reasonably be necessary to pursue the contest.

14. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused